

PART 3 :Exhibit 3 Alex Kapolchok

to:

ellen mulqueen@nyed.uscourts.gov

10/30/2015 12:21 PM

Cc:

"Orenstein, Karin (USANYE)"

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From: Alex Kapolchok <Alex@kapolchoklawservices.com>

To: "ellen mulqueen@nyed.uscourts.gov" <ellen_mulqueen@nyed.uscourts.gov>,

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5 Attachments











Exhibit 3.jpg Exhibit 3 part 2.jpg ethical violations.jpg ABA Model.jpg ex 3-prosecutorial misconduct.jpg

See attached

KAPOLCHOK LEGAL SERVICES

Alexander Kaplochok
B.A Criminal Justice/Psychology
Case Manager & Legal Analyst

Phone: 850-745-GOD5(4635)

JOHN 8:32 And You shall know the truth and the truth shall set you free

From: Pastor D

Sent: Thursday, October 29, 2015 1:24 AM

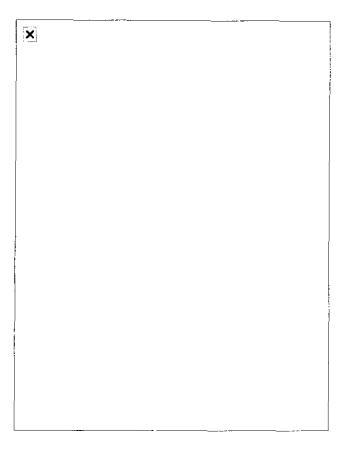
To: Pastor D; Alex Kapolchok

Subject: Exhibit 3

THE MINISTRY OF JUSTICE

- Legal Strategy;
- Case Management;
- Investigative Journalism;
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Pastor D, Public Relations, International Press & Media (Spokesperson)

Political,Legal & International News Anchor Phone: 347-771-8147 https://twitter.com/pastor_d_paris

Pastor D (@pastor_d_paris) | Twitter

The latest Tweets from Pastor D (@pastor_d_paris). A Pastor, Political News Anchor, Activist & investigative journalist exposing the truth to get Justice for Prisoners Rights by sharing the Love of Jesus Christ. Worldwide Read more.

LUKE 8:17 For nothing is hidden that will not become evident, nor anything secret that will not be known and come to light.

-EXHIBIT 3-

Karen Oreinsein Denial to Admit and address Defendant's claim against Illegal Forfeiture

EXHIBIT 3-KAREN ORENSTEIN

Transcript of October 21 2015 showing Lerer besides Orenstein stating before the Court that Ms.Yembe never

made a claim against the forfeited Items although advised to do so.

However, it was another lie for, see letter attached by Robert Larusso on behalf of Ms.Yembe on November 18 2014 showing homeland security reception stamps for september 14 at 2 pm

for all claims submitted by Ms.Yembe.

Full text at http://www.bloomberglaw.com/public/ document/United_States_v_Gnirke_No_1350101_2015_ BL_99_9th_Cir_Jan_02_2015_.

Forfeiture

\$50K Cash Bail Seized. But Lack of Notice To Prisoner Allows Motion to Recover Assets

wes received to the second district the second seco to lack of notice the U.S. Court of Appeals for the Second Circuit held Jan. 6 (Lucas v. United States, 2015 BL. 2181, 2d Cir., No. 14-2291, 1/6/15).

The right to reopen a completed civil forfeiture is "very narrow" and "limited to claims of lack of ad-equate notice" under the Civil Asset Fortesture Reform Act, 18 U.S.C. 983(e)(1), the per curiam opinion said.

Interest to Challenge Outlasts Actual Interest. A completed forfeiture "divests a person of his interest in the subject property." but doesn't divest him of "a right to seek to set aside the forfeiture with respect to his interest in the property," the court said.

The right "may only be asserted within five years after the final notice of seizure, but the statute clearly confers the right for that period even after the forfeiture is complete," the court said.

"We are aware of no circuit court authority that holds, contrary to the statute," that Article III standing "is lost after the interest in the subject property vests in the United States," it said.

"Accordingly, we hold that § 983(e)(1) creates an interest in the form of a right to challenge a forfeiture for lack of notice that survives the issuance of the declaration of forfeiture," the court said.

DEA's Notices Inadequate. The ball money was originally posted by the defendant's brothes. After the case was reserved by a guilty pies, the prother assigned his interest in the ball money to the convicted man, who attempted to collect the \$50,000, the court said.



Assignment Valid Despite Vesting. The appeals court rejected the district court's reasoning that the assignment was invalid because, at the time it was made, the fortel-

Purper Value 10 to 10 to

The convicted man "would not be able to claim an interest of his own in the property, as a bona fide purchaser, free and clear of the Government's claim," the

But he "is not, however, claiming any such interest in the bail money independent of [his brother's] interest," it said

"Therefore, the fact that he gave [the brother] nothing of value in exchange for the assignment is irrelevant to his right to file a motion to set aside the forfeiture under the statute," the court said.

Judges Gerard E. Lynch, Denny Chin and John G. Koeltl, sitting by designation from the U.S. District Court for the Southern District of New York, comprised

Wayne P. Smith, of Schenectady, N.Y., represented the convicted man. The U.S. Attorney's Office, Syracuse, N.Y., represented the government.

Full text at http://www.bloomberglaw.com/public/ document/NICHOLAS_M LUCAS_as assignee of Justin Lucas PetitionerAppellant.

Cruel and Unusual Punishment

Putative Class of Prisoners May Proceed With Claims Over Grouping of Violent Inmates

finding of ascertainability isn't required for class certification where the class seeks only injunctive Certification where the class seems only injurial or declaratory relief, the Third Circuit held Jan. 7 in a putative class action challenging the practice at the federal prison in Lewisburg, Pa., of placing inmates with violent tendencies in the same unit (Shelton v. Bledsoe, 2015 BL 2242, 3d Cir., No. 12-4226, 1/7/15).

The U.S. Court of Appeals for the Third Circuit vacated a district court order denying certification of a class of prisoners under Federal Rule of Civil Procedure 23(b)(2), concerning a prison's alleged practice of placing inmates in the same cell despite knowing that they are hostile to each other.

The opinion by Chief Judge Theodore A. McKee also found that the proposed class's inclusion of those who haven't yet suffered an injury wasn't overbroad, because the Eighth Amendment "protects against the risk-not merely the manifestation-of harm."

The court ruled further that a nonmovant's request for discovery under Fed. R. Civ. P. 56(d) in response to a summary judgment motion doesn't have to take the form of a formal motion, and can be a declaration or affidavit requesting discovery.

The decision also vacated the district court's grant of summary judgment to the federal government on the Eighth Amendment claim, remanding the case.

The Third Circuit affirmed the district court's dismissal of a related Federal Tort Claims Act claim because the plaintiff failed to meet the FTCA's administrative exhaustion requirement.

Hostile Inmates. The plaintiff, Norman Shelton, is an inmate at the federal penitentiary in Lewisburg and is assigned to the "Special Management Unit" of inmates identified as having a history of gang activity or violent tendencies, the court said.

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The Government track Record of Steciling From defendants

In forfeiture proceeding, receivers for insurance companies were entitled to imposition of constructive trust over proceeds of sale of certain residence because residence was purchased with funds obtained by looting insurance companies, insurance companies had no knowledge of purchase of residence, and thus, were innocent owners, and receivers' claim had priority over that of holder of judgment lien because their entitlement to constructive trust arose upon completion of purchase of residence, which occurred six months before other claimant obtained judgment lien. United States v § 2,350,000.00 (2010, DC Conn) 718 F Supp 2d 215

Unpublished Opinion

District court properly calculated order of forfeiture based upon wholesale value of contraband cigarettes as it was authorized under 18 USCS § 981(a)(2)(A) in that proceeds was not limited to net gain or profit realized from defendant's conspiracy offense. United States v Noorani (2006, CA11 Fla) 188 Fed Appx 833, subsequent app (2006, CA11 Fla) 194 Fed Appx 871

Where defendant pled guilty to conspiracy to commit honest services fraud and tax fraud, district court properly dismissed his petition for relief from forfeiture order as barred by forfeiture waiver in his plea agreement; fact that plea agreement mistakenly referenced 18 USCS § 924(d)(1), which authorized forfeiture of firearms and ammunition, was merely scrivener's error and did not negate express terms of plea agreement that listed real and personal property; 18 USCS § 981(a)(1)(C) was specific forfeiture statute cited in defendant's information and district court's forfeiture order. United States v Masilotti (2014, CA11 Fla) 2014 US App LEXIS 8830

unlawful Forceohus proceedings.

USCS

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Prosecutorial Misconduct (cont.)

or limiting absolute immunity would force prosecutors to consider the consequences of their actions relative to their personal accountability.

It is obvious from the cramples

It is worth noting that absolute immunity does not extend to prosecutors when they engage in conduct unrelated to their official prosecutorial duties - such as investigative or discretionary activities. For example, one such case involved comments made by a prosecutor during a press conference. See: Buckley v. Fitzsimmons, 113 S.Ct. 2606 (1993).

The distinction as to what conduct is entitled to immunity can be complicated due to various loopholes, however, as discussed in a recent Seventh Circuit decision that found a prosecutor was not entitled to absolute immunity for fabricating evidence before a defendant's indictment and then prosecuting the defendant, who was eventually exonerated after serving 17 years in prison.

In a fairly technical ruling, the Court of Appeals explained that "A prosecutor cannot retroactively immunize himself from conduct by perfecting his [investigatoryl wrongdoing through introducing the fabricage orders on trial and arguing that the too was not completed until a time at Which he had sequired absolute immunity." See Fields in Whartle, 740 P3d 1107 (7th



November 2014

In a 2014 report, the Center for was almost executed. And there are Prosecutor Integrity suggested replacing prosecutorial absolute immunity with qualified immunity - a lesser form of immunity defense commonly applied to other government actors.

Case 1:14-cv-02693-RJD

Another alternative to curtailing the absolute immunity granted to prosecutors in civil cases is to file criminal charges against prosecutors who engage in egregious misconduct - particularly misconduct that results in wrongful convictions. That was the auggestion of Dallas County district attorney Craig Watkins, who has proposed the increased use of criminal charges to sanction abusive prosecutors; for example, criminal contempt of court.

But then who would prosecute those prosecutors? Presumably, other prosecutors.

Conclusion

THE PERVASIVENESS OF PROSECUTORIAL misconduct is a problem that requires immediate attention by lawmakers, the judiciary, and the professional watchdog organizations and tribunals charged with overseeing attorney discipline, as well as by prosecutors themselves.

Legislative efforts such as the Fairness in Disclosure of Evidence Act are a positive development, though they tend to focus on Brady-related issues and do not reach other forms of wrongdoing. Ultimately, the reporting and redress of prosecutorial misconduct must come from those within the criminal justice system, including judges and defense attorneys, such as through the enforcement of a stronger version of ABA Model Rule & Sweet similar regulations.

Meaningful disciplinary proceedings, also a useful tool, have been under-utilized, and a change in the "conviction at any cost" culture among prosecutors inust be realized through better professional training and education. Only then will we be able to truly address this pervasive problem that serves to undermine public confidence in our criminal justice system - where the emphasis should be on "justice," not conviction rates.

Yet from the viewpoint of those victimized by abusive prosecutors, including those who have been wrongly convicted and imprisoned, disciplinary sanctions such as nola.com; Los Angeles Times; www.syracu reprimands, censures and suspensions provide little comfort. Michael Morton spent nearly 25 years in prison; John Thompson kil.com; Cammercial Appeal

other examples of prosecutorial misco that has put innocent people behind be on death row.

Ultimately, a change in the adve nature of our criminal justice syste needed. Such change is possible, but if an honest effort is made by ever involved, beginning with how prosec view their own role, responsibilities ethical obligations.

As stated by Thompson: "It's abo system that is void of integrity. Miscan happen. But if you don't do anythic stop them from happening again, you keep calling them mistakes."

Sources: ABA Journal; American Bar sociation Model Rule of Professional Con 3.8 (2008); American-Statesman; Aris Star; Associated Press; Daily Business Rev Houston Chronicle; http://allthingscrime com; http://jacksonville.com; http://n yahoo.com; National Law Journal; New Daily News; The New York Times; "I ventable Error: A Report on Prosecute Misconduct in California, 1997-2009, B Veritas Institute (October 2011); *Prosec Misconduct, 2d. ed., by Bennest Gershn *Prosecutor Misconduct: Law, Proced Forms, by Joseph F. Lawless (2011); Champion: "The Myth of Prosecutorial countability After Connick v. Thomp Why Existing Professional Responsibil Measures Connot Protect Against Prosect vial Missonduct," by David Keenan, et 121 Yale Law Journal Online 203 (Octo 2011); Texas Tribune; National Regis of Exonerations; USA Today; Washing Examiner; www.alternet.org; www. gov; www.buffingtonpost.com; www.le com; www.nationalreview.com; wwo newsobserver.com; www.prisonlawblog.cd www.propublica.org; www.prosecutorial countability.com; www.reuters.com; ww splimes.com; www.star-telegram.com; ww stopthedrugwar.org; www.times-standa com; www.prosecutorintegrity.org; www. nocenceproject.org; www.watchdog.org; http gritsforbreakfast.blogspot.com; www.law.u ich edu; "The Brady Colloquy," by Jason Kree 67 Stan. L. Rev. Online 47 (Sept. 201: www.abenews.go.com; www.economist.co www.federalcriminalappealsblog.com; ww com; www.justice.gow/opr; www.pogo.or Tulsa World; www.bronxbureau.org; ww

Prosecutorial Misconduct (cont.)

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Louislana Attorney Discipline Board recommended a six-month suspension but the that prosecutors shall; state Supreme Court imposed only a public reprimand.

Asked by a Huffington Post reported whether any prosecutors had ever said they were sorry for his wrongful conviction, Thompson responded, "Sorry? For what? You tell me that. Tell me what the hell would they be sorry for. They tried to kill me. To apologize would mean they're admitting the system is broken.... That everyone around them is broken. It's the rame motherfucking system that's protectung them.

Less than a year after the Supreme Court's ruling in Connick v. Thompson, the Court found Brady violations by the Orleans Parish District Attorney's Office in another prosecution. In that case, the Court reversed the murder convictions of a defendant based on claims that prosecutors had withheld material evidence. See: Smith v. Capr. 132 S.C. 627 (2012)

ABA Model Rule 3.8

AMERICAN BAR ASSOCIATION'S Model Rules of Professional Conduct are delendant was complete, the prosecutor widely recognized as the touchstone of shall promptly disclose that cridence to an 3.8. "Special Responsibilities of a Prosecutor," has been adopted by 49 states, Guam, jurisdiction promptly disclose that said the U.S. Virgin Islands and the District of to the defendant Columbia. California is the only state to delay to the not adopt a similar rule.

equally to all attorneys, Rule 3.8 is notable because it's the only rule specific to prosecutors. the defendant did not commit and As such, most commentators view Rule 3.8 as

the starting point for prosecutorial ethics.

Rule 3.8 defines "special" ethical duties applicable to prosecutors, including the following, among others. The Rule provides that did not commit, the prosecutor !

Refrain from prosecuting a charge that the prosecutor knows and supported by probable cause.

Make timely disclosife to the defense

of all evidence or hitorriblion known to the production that tends to in connection with sentencing, disclose to the defense and to the tribuna, all unpriviloged misigaring information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; I in acree nee into

· Except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the steered; - prosecuted

· When informed of new, credible and material evidence creating a reasonable likelihood that 3.00 did not commit an offense of which the ethical behavior for attorneys. Model Rule appropriate court or authority and if the constraint was obtained in the prosecutor's to abou or make see table efforts to cause in rial misconduct. Indeed, Innocence I While the ABA's Model Rules apply investigation to the learning whether the co-founder Barry Scheck and forms

and convincing evidence estab a defendant in the prosecutor's jurisdic Was converted of an offerse that the de reek to remedy the expenses

Model Rule 3.8 imposes disclo abligations that are "separate from broader than the Brady constitution standards," so the ABA noved in an an brief filed with the Supreme Court in S

With this in mind, Rule 3.8 w seem to require prosecutors to adher a heightened standard of conduct. Yes is only in theory because, as a 2011 Law Journal Online article notes, the F "vague terminology undermines its eff and enforceability in practice."

For example, "Rule 3.8's prescri force is [] greatly diminished by its fe to address many important aspects o prosecutorial function, including ples gains. More than 90% of federal crit prosecutions are resolved through s pleas [sec: PLN, Jan. 2013, p.20]; hov Rule 3.8 fails to address prosecutorial duct during plea negotiations.

"In sum, Model Rule 3.8 promis its face more than it delivers in practice Yale Law article concludes. While the many instances of prosecutorial misco that clearly fall within its ambit, the fails to address some of the more signi aspects of the prosecutor's justice-se

Even if flawed, Rule 3.8 is still : the few existing tools for curbing prosde de de de de l'ense that (eral judge Nancy Gertner co-aut Jan article recommending that de · When a processor thous of clear attorneys specifically cite Model Ru



November 2014

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Prison Lega

Prison Legal New

ethical violations

Exhibit 3- Prosecutorial Misconduct

Prosecutorial misconduct otherwise said, malicious prosecution statements made several times by Ms.Yembe are valid per the ABA Model and all evidence of lies intercepted.

See attachement of prosecutorial misconduct and underlined data of all ethical violations committed against Ms.Yembe which remain unaddressed until today.

Also please see attached a case of illegal forfeiture were justed was granted.

Ms.Yembe claims that prejudice, racial discrimination, her being an Alien Immigrant has played a major part in all violation she has endured besides, all the accusation which for long remained unsupported by valid evidence therefore could not constitute a legal case which ultimately led to its dismissal in a world where a 98.9% conviction rates rules, and Prosecutors use dirty tactics to force and twist the arm of defendant to bend and sign malicious proposal, Ms.Yembe is a miraculous proof of God's blessing and desire for justice to be exposed to the light of the darkness of false accusation, wrongful imprisonment and torture behind bars for which so many prisoner are still currently victims.

Ms. Yembe like many other victim of wrongful imprisonment is entitled to financial compensation for trauma, sexual, emotional, psychological abuse, ethical violations wrongful imprisonment for dismissed case after 14 months of her life were stolen, her name slandered, and life ruined, however instead of such, she is fighting a forfeiture case where further violation are being entertained and attempted.